1950. **File No.** O. Prev. of Fragmentation /50

Legal Deptt.

A **BRANCH**

Subject:— Opinions under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act 1947

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File No. O. Prev. of Fragmentation /50

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C O N T E N T S

Legal Department File No O. P. of Frogmentation/50

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Mjr/7/7
5 Cs.

Office-of-the-R.L.A.

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

Sections 2(4) 5 & 8.

Reading section 8 with the definition of "fragment" in section 2(4) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 it will be clear that the partition so as to create a fragment would be invalid only after the determination and notification of the standard area under section 5. As there was no such notification issued before the land was partitioned by the Collector, the partition would not be invalid even though it has in effect crea ted a fragmentation.

Sd/- P.M.Lad

o.c. 11/1

Remembrancer of Legal Affairs.

U.R. to R.D. No. 733 dated the 17th January 1950.

Mjr/7/7

4 Cs.

Office of the R.L.A.

Bombay Prevention of Fragmentation ahd Consolidation of Holdings Act, 1947. Secs. 21 ' 26.

The view taken by Secretary, Revenue Department, on the first question correct. No amendment of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, providing for imprisonment and imposition of fime would be necessary when powers adquate for the purpose are contained in section 21 and 26.

Sd/- P.M.Lad

o.c. 23/3

Remembrancer of Legal Affairs.

U.R. to R.D., No. 4080, dated the 24th March 1950

Mjr/7/7

4 Cs.

Office of the R.L.A.

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Sections 29(1) & 32(1) .

The questions raised for the consideration of the R.L.A. are :

(1) Whether the word "errors" mentioned in section 32(1) of the Bombay Prevention of Fragmentation and consolidatin of Holdings Act, 1947, covers errors which would affect the consolidation scheme as well as those that would not affect the scheme, that is, slips of pen or clerical error; and if so, whether the powers under section 32 should be delegated to the Settlement Commissoner and Director of Land Records for correcting such slips of pen or clerical errors in order to avoid frequent references to Government; and

(2) Whether the appointment of a lease, mortgage, etc. referred to in section 29(1) is to be made by the Consolidation Officer after or before the consolidation scheme comes into force and whether a map showing the tenancies, etc., should be among the papers to be published as provided in Rule 6 of the Bombay Prevention of Fragmentation and Consolidation of Holding Rules.

Section 32(1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, provides for Government's power to vary the scheme on account of error, irregualrity or informality after a scheme comes into force. "Error" may include a substantial error affecting the scheme as well as an informal error such as clerical error or a slip of pen; for even an error of the latter kind would affect the rights of the parties under the scheme. Consequently, oven a clerical error or a slip of pen cannot be rectified. without varying the scheme as provided in section 32(1) This power to vary the scheme vests in Government and there being no provision in the Act for delegating that power, the question of delegating such power to the Settlement Commissioner and Director of Land Records would not arise.

Section 29(1) provides for transfer of encumbrances —

This transfer of encumbrances would come into operation only after the scheme has come into force under section 22. This is apparent from the provision in section 29(1) which states that the lessee, mortgagee, creditor or other encumbrancer as the case may be shall exercise his rights accordingly. This inference is reinforced by Rule 6(iv) which provides for a statement showing the names of occupants or holders to whom the new consolidated holdings are allotted with particular survey No. , Hissa No., class of land, tenure, area, assessment and encumbrances, if any. "Encumbrances" as is apparent from section 29, include even a lease. The Statement under Rule 6(iv) is to be made by the Consolidation Officer after a notification under section 15 is published in the Official Gazette. It would, therefore, follow that the appointments of encumbrances have to be made while preparing a scheme for the conso-lidation of holdings and these appointments would come into operation only after the consolidation scheme comes into force. Consequently, all these appointments of encumbrances will have to be made before the consolidation comes into force, although such appointments will not come into force until the consolidation scheme itself comes into force. As stated above, "encumbrances"in Rule 6(iv) include a lease. Consequently a separate map showing the tenancies is unnecessary and a statement prepared under Rule 6(iv) will have to include all leases.

Sd/- P.M.Lad
O.C. 14/4

Remembrancer of Legal Affairs.

U.R. to R.D. No. 5182, dated 17th April 1950.

Mjr/7/7

4 Cs.

Office of the R.L.A.

Confirmation of scheme by Settlement Commissioner when scheme is amended by Consolidation Officer.

Bombay Prevention of Frag. mentation and Consolidation of Holdings Act, 1947.

It is clear from provisions of section 19 and 20 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 that when a draft scheme is published under Sub-section (1) of section 19, whether any objections are or are not received the Settlement Commissioner has to confirm the scheme under sub-section (1) of sectin 20. The scheme as amended and published under sub-section (2) of section 19 also requires to be confirmed by the Settlement Commissioner under section 29(1). But when any objections are received to the amended draft scheme published under sub-section (2) of section 19, the Settlement Commissioner has to forward it to the Government with modifications, if any, and the Government under sub-section (3) of sectin 20 may either confirm or refuse to confirm the scheme. In the present case objection to the draft scheme was received by the Consolidation Officer after its publication under sub-section (1) of section 19. But the Consolidation Officer did not amend the scheme as the objection was untenable. The scheme was therefore not amended and published under sub-section (2) of section 19. The Settlement Commissioner will have to confirm the scheme under sub-section (1) of section 20. (Cf. section 21(1) of the Act). It was unnecessary for the Settlement Commissioner to forward such a scheme to Government, for, only an amended scheme to which objections are received has to be submitted to Government under sub-section (2) of section 20..The view takeh By R.D. at pages 1-2 ante is correct.

Sd/- P.M.Lad

O.C. 1/7

Remembrancer of Legal Affairs.

U.R. to R.D., No. 9116, dated the 3rd July 1950.

Mjr/7/7

4 Cs.

L.D.R.I. No. 195.07 —20-6-195

Submitted.

2. The letter from the Settlement Commr. and Director of Land Records at page 13. ante may please be seen. He has observed therein that the clerical and other errors pointed out by the S.C. and D. of L.R. in the schemes received by him after their due publication by the Consolidation Officers under section 19 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, can be corrected by the Consolidation Officers by publishing an erratum to the draft scheme and giving a period of 30 days from the date of such publication of an erratum for receiving fresh objection if any. R.D. does not agree with this view. R.L.A. has been requested to advise in the matter.

Mjr/7/7

4Cs.

Office of the R.L.A.

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, Section 21(1): Whether publication of a sanctioned ~~of a sanctioned~~ scheme in the Bombay Government Gazette should be dispensed with.

The amendment of section 21(1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, as proposed by Revenue Department does not appear desirable, for the publication under section 21(1) of the whole scheme as finalised is intended to provide a permanent and reliable record of the rights of the parties and a publication of a mere notification without details of the scheme would not serve the purpose.

Sd/- P.M.Lad

o.c. 22/8

Remembrancer of Legal Affairs.

U.R. to R.D. No. 11952, dated the 22nd August 1950.

Mjr/7/7

4 Cs.

The Bombay Prevention of Frag. tion and Consolidation of Holdi Act, 1947.

Appearance of peladers in proceedi under -

GOVERNMENT OF BOMBAY
Revenue Department,
Resolution no. 5985/49,

Bombay Castle, 21st September 1950.

Letter from the Settlement Commissioner and Director of Land Records, No. L.R. 950/VIII of 1950, dated the 10th July 1950.

The Consolidation Officer Poona reports that on publication of a Scheme of Consolidation of holdings with a view to inviting objections thereto under Secti on 19(1) of the Act, one of the persons affected by the Scheme communicated to the Consolidation Officer his objections in writing and also appeared before him with a pleader. The question has therefore arisen whether a pleader should be permitted to appear in such proceedings under the Act.

According to the procedure laid down in Section 19(1) of the Act, the Consolidation Officer has to "consider" the written objections received by him, modify the scheme if he deems necessary and forward the Scheme to the Settlement Commissioner with his remarks on the objection, where necessary, In practice the Consolidation Officer gives personal "hearing" on the spot in order to remove misunderstanding if any. Apparently under the procedure laid down by the Act, no formalities of a judicial or formal enquiry are needed and no decision is to be recorded in the form of an order on the petitions of objections. In the circumstances there appears to be no place for the appearance of pleaders. Perhaps, at the most the C.O. may in his discretion allow a pleador to explain the objection on behalf of a person affec by the scheme, if the written objection is not sufficiently clear. It may be pointed out that pleaders are not allowed t appear, as a matter of right, in the proceedings under the Bombay Tenancy and Agricultural Lands Act, 1948, although

they are judicial and formal proceedings. Vide G.L.R.D..N o. 1118/24-33463 dated 8-12-44 No 4727/45-F, dated 17-7-47 and R.D. Circular No 4727/45 dated 20-4_49. Early orders of Government are solicited in the matter."

Memorandum from the Remembrancer of Legal Affairs. No. 13015, dated the 12th September 1950. -

"The Consolidation Officer is not a court or a tribunal or person authorised to take evidence. Consequently no pleader can claim any right to appear before the Consolidation officer in proceedings under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947,, (Sec sections 7 and 8 of the Bombay Pleaders Act, 1920. and section 14(1) of the Indian Bar Councils Act, 1926). The point raised by the Honourable the Chief Justice of Bombay in respect of the a-ppearance of pleaders in proceedings under the Tenancy Act has no application to the proceedings in question as the Consolidation Officer is not required to record evidence."

RESOLUTION:- Copies of the R.L.As' memorandum should be forwarded to the Officers concerned for information and guidance.

By order of the Governor of Bombay,

M.E. GANGAT?

Additional Under Secretary to the Government.

To

The Settlement Commissioner and Director of Land Records,
All Collectors,
All Consolidation Officers,
All Superintendents of Land Records,
All District Inspector of Land Records,
All Accountant General,
The Finance Department,
The Legal Department.

Mjr/7/7
4 Cs.

Office of the R.L.A.

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 Sects. 20(3),21(1) and Bombay Prevention of Fragmentation and Consolidation of Holdings Rules, 1948. Rule 7.

Seen and returned.

While under section 21(i) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 the final scheme is required to be published in the official Gazette, under the proviso to section 20(3) the scheme modified ~~xxxxx~~ by proviso to section 20(3) the scheme modified merely published. Consequently the latter publication need not be in the official Gazette and it would be sufficient if the mode of publication specified in rule 7 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Rules, 1948 is adopted for the purpose.

Sd/- P.M.Lad

O.C. 5/6

Remembrancer of Legal Affairs.

U.R. to R.D. No. 7633, dated 6th June 1950

Mjr/7/7

4 Cs.

Office of the R.L.A.

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Section 19 Appearance of pleaders before the Consolidation officers,

The Consolidation Officer is not a court or a tribunal or person authorised to take evidence. Consequently no pleader can claim any right to appear before the Consolidation Officer in proceedings under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (See sections 7 and 8 of the Bombay Pleader's Act, 1920 and section 14(1) of the Indian Bar Councils Act, 1926). The point raised by the Hon'ble the Chief Justice of Bombay in respect of the appearance of pleaders in proceedings under the Tenancy Act has no application to the proceedings in question Consolidation Officer ~~xxxxxx~~ is not required to record evidence.

Sd/- P.K.Lad

O.C. 11/9

Remembrancer of Legal Affairs.

U.R. to R.D. No. 13015. dated the 12th September 1950.

Mjr/7/7

4 Cs.

Office of the R.L.A.

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Sections 5(3), 8 and 11 ~
Code of Civil Procedure 1908 Section 54.

Under section 5 sub-section (1) of the Bombay ..ve ntion of Fragmentation and Consolidation of Holdings Act 1947, Government has the power to determine the standard area for each class of land in a local area and under sub-section (3), the standard area thus determined has to be notified. Section 8 provides that no land in any local area shall be transferred or partitioned so as to create a fragment. Section 11 provides that when a decree is transferred to the Collector under section 54 of the Code of Civil Procedure, 1908, for the partition of an undivided estate assessed to the payment of revenue to the Crown in any local area for which standard areas have been fixed, or for a speparate possession of share of such an estate, no such partition or separation shall be made so as to create a fragment. It is clesr from these provisions that section 8 prohibits a general partition while section 11 prohibits a partition through the Court so as to create a fragment. Although partition contemplated by section 8 relates to a general partition that provision will have to be read with section 11 when it rel tes to a partition through the Civil. ~~Kxxxxx~~ The partition contemplated by section 54 of the Civil Procedure Code is not confined to a mere division of the lands but includes also the delivery of the shares to their respective allottees, thus completely carrying out the partition. (See XI Bombay 662, A.I.R. 1927 Nagpur,300) Consequently, partition through the Civil Court would not be considered to be comolete until possession of the shar to the respective allottees has been given. In the present case no doubt the District Inspector of Land Records did partition the land and the Collector sanctioned the partition. But astated above, since delivery of the possession was not given, the partition could not be deemed to have been complete Before it was thus completed, a notification issued under

Section 5(3) of the Act fixing the standard area with the result that if the allotment of the shares contravened the provisions of section 8 and 11, that is to say, if the area allotted to each sharer were less than the standard area, the partition could be deemed to have been made so as to create a fragemnt within the meaning of Section 11. Such partition would, therefore, be in contravention of the provisions of the Act and cannot be recognised.

Sd/- P.M.Lad

O.C. 1/12

Remembrancer of Legal Affairs.

U.R. to R.D. No. 17066, dated the 2nd December 1950

Mjr/7/7

4 Cs.